



COUNTY OF LOS ANGELES
Internal Services Department

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United We Stand

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Director

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November 19, 2002

To: Each Supervisor

From: Joan Ouderkirk, Director
Internal Services Department

Subject: **AGENDA ITEM #37--NOVEMBER 19, 2002**
AWARD OF PARKING FACILITIES MANAGEMENT CONTRACT
TO FIVE STAR PARKING

On late Monday afternoon, November 18, 2002, ISD was notified (i.e., by a Board office) that a protest letter had been delivered and received from PCI in relation to the proposed parking contract on the November 19, 2002 agenda. Coincidentally, at that same time, Robert Hindle, Vice President of PCI, was in our office reviewing the Five Star Parking proposal, pursuant to a Public Records request he had made on Thursday November 14, 2002. Upon learning of the protest we asked Mr. Hindle for a copy of the protest letter, which he then provided. There are many inaccuracies in PCI's letter. In addition it is very unfortunate that they decided to wait until the very last minute to make us aware of their concerns, despite the fact that they had received a complete debriefing on their proposal on October 21, 2002.

The following responds to the allegations made in the protest letter.

Issue: Five Star Parking has recently undergone a breakup or reorganization that includes the transfer of major assets and contracts.

While Mr. Hindle was in our office, we asked him how he became aware of the alleged breakup or reorganization of Five Star. Although he characterized the breakup as a fact in his protest letter, he responded to our direct questioning by saying "...it's a rumor on the street..." Mr. Hindle was unable to identify a definitive source for the information.

Subsequent to speaking with Mr. Hindle, my office contacted Joe Lumer, Partner, Five Star Parking. Mr. Lumer assured us that there has not been a breakup or reorganization within Five Star since their firm's proposal was submitted on August 21, 2002. He further stated that no organizational changes are anticipated.

Issue: The Proposer's Qualifications make up 20% of the overall evaluation. It is unfair to base Five Star's background and experience on locations they no longer operate. PCI went on to state that Five Star has lost clients such as Dodger Stadium, Staples Center and the Memorial Coliseum.

In speaking with Five Star Parking, they again assured us that their contracts with the three above-named facilities are valid and ongoing and that they are not in jeopardy of losing these contracts. It is important to note that Five Star did not submit these stadium facilities as references since the RFP asked proposers to provide references other than stadiums (i.e., due to the event-based nature of their operations versus the ongoing operations of a County parking lot.)

Issue: The contract does not require any financial guarantees, such as an irrevocable letter of credit, performance of fidelity bond, etc.

Performance bonds and/or letters of credit are not required by the County. An October 10, 1991 Chief Administrative Office memo to Each Supervisor, eliminates the performance bond requirement for most contracts, other than construction (Attachment A.) This change was based on the belief that the County's interest is better protected by thorough pre-screening and evaluation techniques which establish the performance capabilities of the prospective bidders. In addition, performance bonds have disadvantaged small businesses.

Purportedly, PCI's concerns related to performance bonding were based on their concerns about Five Star's financial viability. PCI offered no details or documentation to support their concerns. From our perspective, Five Star has been a going concern since 1981, has managed County parking facilities for over a decade, and meets the financial requirements set forth in the RFP.

Issue: What is the legal status of Five Star Parking?

Five Star Parking is a General Partnership as stated on the Community Business Enterprise document in their proposal. The partners are Joe Lumer and Steve Ullman.

Issue: PCI requests that its proposal be re-evaluated based on the fact that two of their five references did not respond.

The Request for Proposal stated that "...the proposer will be evaluated on the verification of references provided..." Each verified reference is worth 200 points in the evaluation process. PCI received 600 points out of a possible 1,000.

Between August 29 and September 10, 2002, ISD followed its established protocol, of calling each reference three times. During these telephone calls specific questions are asked of the reference. Two of PCI's 5 references did not return our phone calls. We telephoned the County of Orange three times between September 4 and 9, 2002. Three messages were left, yet no one returned our calls. The Port of Los Angeles was called once. The voice mail response indicated that the party we wished to speak with was on vacation until September 11, 2002. We left a voice mail, however, no one at the agency returned our call.

It should be noted that one of Five Star Parking's references also did not return our calls and, accordingly, 200 points were deducted.

Finally, as indicated on the attached, had we allotted proposers full credit for references submitted, as PCI requests, (i.e., rather than those actually contacted,) PCI still would have fallen short of the winning proposal.

Issue: Information presented in the Request for Proposal concerning Living Wage conflicted with information in the Office of Affirmative Action Living Wage Contractor Guide distributed at the August 7, 2002 Proposer's Conference.

The Living Wage Contractor Guide does conflict with the Request for Proposals. The guide, is a general informational tool and is not a binding part of the Request for Proposal, therefore, the information in the RFP takes precedence.

We have reviewed the questions and answers from the Proposer's Conference and determined there were no requests for clarification on Living Wage. PCI subsequently contacted us regarding clarification of this issue and they were advised to adhere to the language in the RFP.

In addition, it should be noted that even if PCI was able to reduce their bid to reflect savings associated with part-time salaries, for 10% of their workforce, the resultant change in points would still leave them short of the winning proposal.

Issue: PCI would like all proposers to be allowed an opportunity to submit a best and final offer.

Requesting that all proposers to submit a best and final offer is not needed as the issues raised in the PCI letter are without merit. In addition, PCI reviewed the Five Star proposal on November 18, 2002, as well as receiving a formal vendor debriefing on the strengths and weaknesses of their proposal on October 21, 2002. The information gained in this review by PCI provides them an unwarranted advantage over the other proposers if we were to request best and final offers.

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Summary

The allegations made by PCI are generally without basis. In addition, the attached "revised" Evaluation Matrix (Attachment B) shows that even if all proposers received full points for submitted (i.e., as opposed to actually verified references) and if we reduced PCI's bid to reflect savings to allow for the use of part-time staff, PCI would have still been far below Five Star's bid by 1,302 points.

I am available this morning to clarify any issues raised in the PCI letter, or to answer any additional questions.

JO:

Attachments

c: David Janssen
Lloyd Pellman
Brian Center
Chuck Bookhammer
Brence Culp
Curt Pederson
Angela Mazzie



**COUNTY OF LOS ANGELES
CHIEF ADMINISTRATIVE OFFICE**

215 HALL OF ADMINISTRATION, LOS ANGELES, CALIFORNIA 90012
974-1101

ATTACHMENT A

RICHARD B. DIXON
CHIEF ADMINISTRATIVE OFFICER

October 10, 1991

Each Supervisor

Richard B. Dixon
Chief Administrative Officer

Subject: ELIMINATION OF BARRIERS TO MWBE CONTRACTING

On July 30, 1991, the Board adopted a County Minority and Women-Owned Business Enterprise (MWBE) program which included as one of its major elements the identification and elimination of barriers to contracting. Supervisor Molina called for aggressive action in remedying barriers that are already known to create obstacles, such as performance bond requirements.

Revised Performance Bond Requirements

I am pleased to inform you that as a result of personally pressing for action, a revised policy on performance bond requirements has been established which is intended for immediate implementation. The policy, a copy of which is attached, eliminates the performance bond requirement for most contracts other than construction, which are governed by State law. Under no circumstances will performance securities be required for contracts under \$50,000.

The policy emphasizes that for contracts involving the purchasing or contracting for supplies, equipment, and services, the County's interest is better protected by thorough pre-screening and evaluation techniques which establish the performance capabilities of prospective bidders. In those rare instances when a performance bond is deemed necessary, added flexibility is provided by advocating the use of certificates of deposit or letters of credit payable to the County as alternatives to surety bonding. This reduces the cost to the contractor and the County, allows the contractor to collect interest if the contract is performed satisfactorily, and protects the County against default.

Significance

This revision in policy is an important milestone for increasing opportunities of small minority and women-owned firms to contract with the County.

Under a requirement to post a performance bond, firms are often required to assign financial securities to the bonding company as collateral. This requirement can be as high as 40% of the contract price, which is prohibitive for smaller organizations. Since performance bonds are, for the contractor, a direct cost of doing business, it is passed on to the County by at least the bonding company's fee. Unnecessary bonding is thus an unnecessary expense to the public. And, since most commercial firms do not require performance bonds, their cost to do business is less than the County's for the same goods and services.

The revised policy represents very little risk to the County as the vast majority of County contracts require satisfactory delivery of the product or service prior to payment. Risk to the County is generally confined to large dollar contracts that provide for pre-payments or progress payments, such as with construction projects or the development of major automated systems, where satisfactory fulfillment of a contract may not be determined for an extended period of time. In these cases, letters of credit or certificates of deposit or, if warranted, performance bonds could continue to be required, providing the department head has approved its use. Quarterly reports to the Chief Administrative Office on contractors required to post security would ensure oversight of the policy's implementation and the cost-effective application of its use.

Communicating Policy Changes

Because performance bonding is viewed by minority and women-owned companies as a major barrier to contracting with the County, it is very important that special efforts be undertaken to disseminate information on the revised policy. In this regard, the following activities have been completed or are underway:

The Contract Managers Network hosted a discussion of performance bonding for departments on October 4, 1991.

On October 18, 1991, departments will meet with a small group of MWBE representatives to jointly review the performance bond policy and to determine whether additional modifications are in order.

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The Board may wish to assist in publicizing the revised policy and the County's intent to increase access of minority and women-owned businesses to County contracting. If you wish, my office is prepared to assist in the preparation of press releases.

Additional Actions Underway

- Examination of vendor payment issues by the Internal Services Department is targeted for the latter part of October.
- An outreach program to Latin firms is being arranged by the Internal Services Department and the Department of Health Services in cooperation with the Latin Business Association for the latter part of October.

If you have any questions or need additional information, please let me know.

RBD:LMJ
RJP:mmg4

Attachment

c: Affirmative Action Compliance Officer
Auditor-Controller
Department of Health Services
Internal Services Department

bondages.mut

PERFORMANCE BONDS AND OTHER PERFORMANCE SECURITY INSTRUMENTS FOR PURCHASES OF SUPPLIES, EQUIPMENT, AND CONTRACTS FOR SERVICES

These performance security guidelines are applicable to purchases of supplies and equipment and to contracts for services. They do not apply to construction contracts which are governed by applicable State laws and/or regulations.

I. INTRODUCTION

The purpose for requiring that a contractor deposit performance securities with the County is to protect the County's interest in the event of contractor's failure to perform.

Generally, it is not necessary to require a bond of any type for most purchases or contracts. Since the cost of bonds is passed on to the County, unnecessary bonding is an unnecessary expense to the public. Also, requirements for bonding often present difficulties for small and disadvantaged businesses, and otherwise can be impediments to competition.

The County's interest is better protected by thorough pre-screening and evaluation techniques throughout the purchasing and contracting process concerning the performance capabilities of prospective bidders. Risk to the County is minimized to the extent that contracts include statements of work that are clearly defined and are awarded only to bidders deemed to be responsible. Once a contract is awarded, a program of vendor evaluation affords the best grounds for ensuring that contract terms are met and that performance is proceeding satisfactorily.

A bond should be required only if, after a review of all factors, the Contract Administrator determines that the risk of loss to the County will be significant if the contractor fails to perform. These situations are rare and should be the exception. Risk to the County is primarily restricted to contracts that provide for progress payments, such as construction projects or the development of major automated systems, where satisfactory fulfillment of a contract may not be determined for an extended period of time.

If a determination is made that security is required to protect the County's interests, it is not necessary that the security instrument take the form of a performance bond. Other instruments, especially certificates of deposit and letters of credit are more suitable in most situations.

II. POLICY

A. A performance security is not required if:

1. the purchase or contract is less than \$50,000.
2. the contractor has demonstrated a strong financial position.
3. the contractor has a history of successfully completing similar contract obligations.

4. the contractor will be paid only after service is satisfactorily performed.
5. the contractor could be replaced with another contractor and work completed without undue delay or additional cost.

The cumulative added cost to the County resulting from the performance bond requirement and the barrier it creates to contracting with minority and women-owned businesses dictate prudence in its application. Department heads, therefore, are required to approve the imposition of a performance security requirement on contractors. Additionally, departments are to provide quarterly reports to the Chief Administrative Office of contractors required to post security.

B. Analysis of Risk

A determination that performance security is necessary should be based on findings that the risk of financial loss to the County is significant. It is contemplated that except in rare instances, performance security is not indicated. It may be justified for contracts that require prepayment, progress payments, or aggregate payments where satisfactory performance cannot be determined for an extended period of time or where such payments are sufficiently high in dollar value as to warrant the added cost to the County to require security.

Added care must be taken in the analysis of risk for smaller, innovative minority or women-owned businesses. Often, a performance security is required because the business has not been established long enough to fully affirm a strong financial record or extensive history of successfully completed contracts. These elements alone should not mandate a requirement for performance security. Instead, the amount of the contract, the terms of payment, and the potential cost to the County in the event of default should dictate whether a performance security is warranted. If the amounts are modest and the terms of payment are predicated on performance, then security requirements should not be imposed. Under no circumstances may a performance security be required for purchases or contracts under \$50,000.

III. PERFORMANCE SECURITY INSTRUMENT ALTERNATIVES

A. Irrevocable Letters of Credit, Certificates of Deposit or Cash Deposits

If it is determined that a performance security is indicated, a form of protection which can reduce costs to the contractor and the County is to allow the contractor to post a certificate of deposit or letter of credit payable to the jurisdiction and on which he/she collects interest if the contract is performed satisfactorily. It is preferable to performance bonds and should be considered in lieu of bonding to especially assist small minority and women-owned businesses.

The amount of a letter of credit or certificate of deposit may be considerably less than the contract sum, because irrevocable letters of credit and certificates of deposit are immediately accessible by County. The County also has immediate access to any cash deposits a contractor wishes to make.

The cost passed on to the County for these security instruments should be substantially lower than performance bonds, since no premiums are paid, and the instruments may be revenue generating in the form of interest/dividends.

B. Performance Bonds

Performance Bonds are reserved for large dollar contracts that involve pre, aggregate, or progress payments where, in the event of default, the cost to the county could be substantial. The surety assumes responsibility for ensuring that the contract is completed in the event of contractor failure, or that damages are paid up to the financial limits of the bond.

Often, these contracts are for highly specialized services and require the County's careful review of any replacement contractor proposed by the surety. For this reason, contract language should include the right of County to approve any proposed replacement contractor.

Performance bonds should usually be equal to the contract price. The costs passed on to the County will be greater than for certificates of deposit, letters of credit, or cash deposits.

C. Maintaining Integrity of Performance Security Instruments

Departments should store performance security instruments, other than cash, in a safe. Alternatively, departments may choose to utilize the services of the Treasurer and Tax Collector. In either event, storage should be sufficient to maintain integrity of the instruments. Cash must be deposited with the Treasurer and Tax Collector in all cases.

IV. ADVANCE PAYMENTS

In general, contracts should only provide for payment upon value received; however, advances may be deemed appropriate under certain circumstances. Such advance financial allocations to contractors are separate business decisions, distinct from a determination that the contractor can perform. Any decision to advance start up funds in the form of advance deliverable payments, loans, advance payments for goods, etc., should be made only after the basic business decision that the contractor can perform has been made.

Departments should establish that the advance will be protected against loss through commercial crime insurance or through a self-insurance plan consisting of collateralized security. This can be in the form of a cash deposit, a letter of credit or a certificate of deposit.

	FIVE STAR	PCI
Original Score	8,760	7,221
Add - Additional Points for References	200	400
Add - Additional Points for Savings associated with Part Time employees	-	37
Revised ('theoretical') score	8,960	7,658
ORIGINAL COST	4,830,227	8,715,594
REVISED (THEORETICAL) COST		8,600,594